



U.S. Department
of Transportation

Southern Region
Office of the Regional Counsel

DEPT. OF TRANSPORTATION
DOCKETS

P.O. Box 20636
Atlanta, Georgia 30320

Federal Aviation
Administration

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(404) 305-5223 FAX

SEP 10 2008

CERTIFIED - RETURN RECEIPT REQUESTED

Hearing Docket
FAA, AGC-400, Room 2014
600 Independence Avenue, SW
Washington, DC 20591

Re: In the Matter of New England Truck Master
FAA Case No. 2008SO700136

CP08SO0020 / 2008-1047

Enclosed herewith please find a copy of a *NOT INCLUDED - SEM* request for hearing and the original and one copy of the Complaint in the above-referenced proceeding.

The FAA requests that the hearing in this matter be held in the Atlanta area, and expects that the hearing will last one day.

Please address all communications for the FAA to the undersigned, at:

Federal Aviation Administration
Office of the Regional Counsel, ASO-7
Southern Region
P.O. Box 20636
Atlanta, Georgia 30320
Telephone: (404) 305-5200, facsimile (404) 305-5223.

Sincerely,

Andrea Michelle Harper
ANDREA MICHELLE HARPER
Attorney
Office of the Regional Counsel

Enclosures

RECEIVED

SEP 24 2008

FAA'S DOCKET

**U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
FEDERAL AVIATION ADMINISTRATION**

RECEIVED
SEP 25 2008
HEARING ROOM

FEDERAL AVIATION ADMINISTRATION,
Complainant,

vs.

New England Truck Master

Respondent.

FAA Docket No.
Judge

JUDGE NOT YET ASSIGNED

COMPLAINT

The Federal Aviation Administration (FAA), by counsel, hereby files its Complaint, pursuant to Rule 208 of the Rules of Practice (14 C.F.R. 13.208), and states as follows:

I.

1. On August 14, 2008, Respondent, New England Truck Master was advised through a Final Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of \$29,100. On September 8, 2008, the Agency Attorney received a written request for a hearing from the Respondent.

II.

2. On or about December 8, 2007, New England Truck Master (NETM) knowingly offered to United Parcel Service (UPS) a fiberboard box (shipment) containing hazardous materials for transportation by air.
3. The shipment, assigned UPS tracking number 1Z 1Y7 30R 01 9642 2094 was offered by NETM for Next Day Air transportation to Chattanooga, TN.
4. At all times mentioned herein, the shipment was not accompanied by a Shipper's Certification or Declaration of Dangerous Goods.
5. On or about December 8, 2007, ground-handling personnel at the UPS sort facility in Louisville, Kentucky discovered the shipment leaking.

6. The fiberboard box described in paragraph 1 contained a 1-pint metal can of paint.
7. Paint is classified as a hazardous material under the Department of Transportation Hazardous Materials Regulations (HMR) (49 C.F.R. § 172.101).
8. The proper shipping name of paint is **Paint**. It is in Hazard Class 3, Packing Group **III**, and has an assigned identification number of **UN1263**. The proper label is **FLAMMABLE LIQUID**.
9. NETM offered the shipment of hazardous material for transportation by air without shipping papers that included:
 - (a) the assigned identification number prescribed for each material;
 - (b) the proper shipping name prescribed for each material;
 - (c) the hazard class prescribed for each material;
 - (d) the packing group prescribed for each material;
 - (e) the total net mass per package; and
 - (f) the number and type of packages.
10. NETM offered the shipment of hazardous material for transportation by air and failed to:
 - (a) certify that the materials were in accordance with the HMR (49 C.F.R. §§ 171, et seq.) by printing the certification set forth in § 172.204(a) or § 172.204(c)(1) of the HMR;
 - (b) prepare the required certifications in duplicate; and
 - (c) add the following statement to the certification:

“ I declare that all of the applicable air transport requirements have been met.”
11. NETM offered the shipment of hazardous materials for transportation by air and failed to:
 - (a) mark the outer container with the proper shipping name of each hazardous material contained therein;
 - (b) mark the outer container with the assigned identification number of each hazardous material contained therein;

- (c) mark the outer container with standard orientation markings; and
 - (d) affix a FLAMMABLE LIQUID label to the outer container.
12. NETM offered the shipment of hazardous materials for transportation by air and failed to provide emergency response information.
 13. NETM offered the shipment of hazardous materials for transportation by air and failed to provide an emergency response telephone number.
 14. NETM offered the shipment of hazardous materials for transportation by air and failed to instruct each of its officers, agents, and employees having responsibility for preparing the shipment as to the applicable regulations.
 15. NETM offered the shipment of hazardous materials for transportation by air and failed to package it so there would be no identifiable release of hazardous material to the environment.
 16. NETM offered the shipment materials of hazardous materials for transportation by air and failed to pack, secure, and cushion the package to prevent breakage or leakage.
 17. NETM offered the shipment of hazardous materials for transportation by air and failed to use an authorized packaging for its transportation.
 18. By reason of the above, NETM violated the following Department of Transportation Hazardous Materials Regulations (Title 49 of the Code of Federal Regulations):
 - (a) Section 171.2(e) in that NETM offered a hazardous material for transportation in commerce when the hazardous material was not properly classed, described, packaged, marked, labeled, and in condition for shipment.
 - (b) Sections 172.200(a) and 172.202(a)(1) in that NETM offered a hazardous material for transportation and failed to describe the hazardous material on the shipping papers, including the identification number prescribed for the material as shown in Column 4 of the § 172.101 Table, in the manner required by this subpart.
 - (c) Sections 172.200(a) and 172.202(a)(2) in that NETM offered a hazardous material for transportation and failed to describe the hazardous material on the shipping papers, including the proper shipping name prescribed for the material in Column 2 of the § 172.101 Table, in the manner required by this subpart.

- (d) Sections 172.200(a) and 172.202(a)(3) in that NETM offered a hazardous material for transportation and failed to describe the hazardous material on the shipping papers, including the hazard class or division prescribed for the material as shown in Column 3 of the § 172.101 Table, in the manner required by this subpart.
- (e) Sections 172.200(a) and 172.202(a)(4) in that NETM offered a hazardous material for transportation and failed to describe the hazardous material on the shipping papers, including the packing group, in Roman numerals, prescribed for the material in Column 5 of the § 172.101 Table, if any, of the material covered by the description, in the manner required by this subpart.
- (f) Sections 172.200(a) and 172.202(a)(6) in that NETM offered a hazardous material for transportation and failed to describe the hazardous material on the shipping papers, including the total net mass, per package, in the manner required by this subpart.
- (g) Sections 172.200(a) and 172.202(a)(7) in that NETM offered a hazardous material for transportation and failed to describe the hazardous material on the shipping papers, including the number and type of packages (indicated by description of the package).
- (h) Section 172.204(a) or (c)(1) in that NETM offered a hazardous material for transportation and failed to certify that the material was offered for transportation in accordance with this subchapter by printing on the shipping paper containing the required shipping description one of the certifications set forth in this part.
- (i) Section 172.204(c)(2) in that NETM offered a hazardous material to an aircraft operator for transportation by air and failed to provide two copies of the certification required in this section.
- (j) Section 172.204(c)(3) in that NETM offered for transportation by air a hazardous material authorized for air transportation and failed to add to the certification required in this section the following statement:

“ I declare that all of the applicable air transport requirements have been met.”
- (k) Section 172.301(a) in that NETM offered for transportation a hazardous material in a non-bulk packaging and failed to mark the package with the proper shipping name and identification number (preceded by “UN” or “NA”, as appropriate) for the material as shown in the §172.101 table.

- (l) Sections 172.300(a) and 172.312(a)(2) in that NETM offered a non-bulk combination package having inner packagings containing liquid hazardous materials for transportation and failed to legibly mark the package with standard orientation markings, on two opposite vertical sides of the package with the arrows pointing in the correct upright direction.
- (m) Section 172.400(a) in that NETM offered for transportation a hazardous material in one of the packages or containment devices listed in this subpart and failed to label the package or containment device with the labels specified for the material in the §172.101 Table and in this subpart.
- (n) Sections 172.600 and 172.602(b)(3) in that NETM offered for transportation a hazardous material and failed to present the emergency response information— (i) on a shipping paper; (ii) In a document, other than a shipping paper, that includes both the basic description and technical name of the hazardous material as required by §§172.202 and 172.203(k), the ICAO Technical Instructions, the IMDG Code, or the TDG Regulations, as appropriate, and the emergency response information required by this subpart (e.g., a material safety data sheet); or (iii) related to the information on a shipping paper, a written notification to pilot-in-command, or a dangerous cargo manifest, in a separate document (e.g., an emergency response guidance document), in a manner that cross-references the description of the hazardous material on the shipping paper with the emergency response information contained in the document.
- (o) Section 172.604(a)(3) in that NETM offered a hazardous material for transportation and failed to provide a 24-hour emergency response telephone number which was entered on a shipping paper (i) immediately following the description of the hazardous material; or (ii) in a clearly visible location.
- (p) Section 173.1(b) in that NETM offered a hazardous material for transportation and failed to follow its duty to instruct each of its officers, agents, and employees having responsibility for preparing hazardous materials for shipment as to applicable regulations of this subchapter.
- (q) Section 173.24(b)(1) in that NETM failed to use a package which was designed, constructed, maintained, filled, its contents so limited, and closed, so that under conditions normally incident to transportation, there would be no identifiable release of hazardous material to the environment.
- (r) Section 173.24a(a)(3) in that NETM failed to ensure that inner packagings of combination packagings were sufficiently packed, secured, and cushioned to prevent their breakage or leakage and to control their movement within the outer packaging under conditions normally incident to transportation.


- (s) Section 173.173(b)(1) in that NETM offered paint, paint-related material, adhesives, ink or resins and failed to package the hazardous material as prescribed in §173.203 of this part for a Packing Group III material.

19. Pursuant to 49 U.S.C. Section 5123(a), New England Truck Master is subject to a civil penalty not lower than \$250 (\$450 for training-related violations), nor greater than \$50,000 (\$100,000 if death, serious illness, severe injury, or substantial property damage results), for each violation of the Department of Transportation Hazardous Materials Regulations.

20. Under the facts and circumstances of this case, a civil penalty of \$29,100 is appropriate.

WHEREFORE, the Agency, by counsel respectfully requests that the Administrative Law Judge enter an order that Respondent be assessed a civil penalty in the amount of \$29,100.

Respectfully submitted this 19th day of September 2008.


ANDREA MICHELLE HARPER
Attorney
Office of the Regional Counsel

PLEASE NOTE:

Pursuant to Title 14 CFR Section 13.209(a), you are required to file a written answer to this Complaint, or a written Motion to Dismiss if appropriate, not later than 30 days after the date shown on the Certificate of Service which follows.

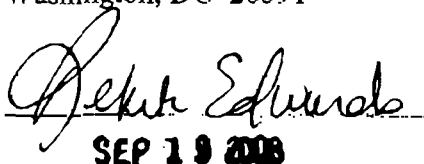
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint has been mailed this date by Certified Mail, Return Receipt Requested, to the following:

New England Truck Master
55 Access Road
Stratford, CT 06615

Hearing Docket
FAA, AGC-400, Room 2014
600 Independence Avenue, SW
Washington, DC 20591

(Original + 1 copy)


SEP 19 2008

Dated _____